

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

LAZARO CANTILLO, # 67173-004

PETITIONER

V.

CIVIL ACTION NO. 3:19-CV-322-KHJ-FKB

WARDEN D. PAUL

RESPONDENT

ORDER ADOPTING REPORT AND RECOMMENDATION

Before the Court is the Report and Recommendation of United States Magistrate Judge F. Keith Ball. [17]. That Report recommends that Petitioner Lazaro Cantillo's [1] Petition for Writ of Habeas Corpus be dismissed. Written objections to the Report were due by June 30, 2022. The Report notified the parties that failure to file written objections to the findings and recommendations by that date would bar further appeal in accordance with 28 U.S.C. § 636. [82] at 5.

When no party has objected to a magistrate judge's report and recommendation, the Court need not review it de novo. 28 U.S.C. § 636(b)(1). In such cases, the Court can apply the clearly erroneous, abuse of discretion, and contrary to law standards of review. *See United States v. Brigham*, 569 F.3d 220, 228 (5th Cir. 2009) (citation omitted).

Petitioner Lazaro Cantillo sues under 28 U.S.C. § 2241. [1]. Cantillo asserts that his sentence was improperly enhanced under U.S.S.G. § 4B1.1, the career offender sentencing guideline, pursuant to *Mathis v. United States*, 136 S.Ct. 2243 (2016), and *Descamps v. United States*, 133 S.Ct. 2276 (2013). The Magistrate

Judge found that Cantillo's § 2241 petition should be dismissed as an "abuse of the writ" because he "rais[ed] a claim in a subsequent petition that he could have raised in his first, regardless of whether the failure to raise it earlier stemmed from a deliberate choice" and he "raise[d] the same claim a second time." [17] at 5–7 (citing *Beras v. Johnson*, 978 F.3d 246, 252 (5th Cir. 2020)). Based on this, the Magistrate Judge determined that the Court is without jurisdiction to consider Cantillo's petition and recommended that it be dismissed with prejudice. Cantillo did not object to the Report and the time to do so has passed. The Court finds that the Report and Recommendation is neither clearly erroneous nor contrary to law and should be adopted as the opinion of this Court.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the Report and Recommendation [17] of United States Magistrate Judge F. Keith Ball, entered in this cause should be, and the same is, adopted as the finding of this Court.

IT IS, FURTHER, ORDERED AND ADJUDGED that this case is DISMISSED WITH PREJUDICE.

A separate Final Judgment will issue this day.

SO ORDERED, this the 6th day of July, 2022.

s/ Kristi H. Johnson
UNITED STATES DISTRICT JUDGE